IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.532/1996
(Mining Engineer Bikaner Vs. Khoom Singh)

Date of order : 21.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. N.K. Bohra, for the respodent.

By way of filing this writ petition, the Mining Engineer, Mines & Geology Department, Bikaner has challenged the order dated 2.11.1993 (Annexure-5) passed by Judge, Labour Court, Bikaner whereby the Judge, Labour Court while accepting the application filed under Section 33 C (2) of the Industrial Disputes Act, 1947 (hereinafter the “Act of 1947” only) has passed the award for payment of Rs. 7358/-.

Learned Dy. Govt. Advocate argued that the impugned award passed by Judge, Labour Court, Bikaner is totally without jurisdiction as per the language of Section 33C (2) of the Act of 1947. There is no power left with the Judge, Labour Court to adjudicate the

entitlement of the workman. Learned Dy. Govt. Advocate has invited the attention of this Court towards Section 33C (2) of the Act of 1947, which reads as follows :

> "33C. Recovery of money due from an employer.- (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months;
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> Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

While inviting the aforesaid provision of the Act of 1947, it is contended by learned Dy. Govt. Advocate that by the impugned award, the Judge, Labour Court has allowed pay-scale to the respondent on the basis of principle of equal pay for equal work and held that the respondent is entitled for the pay-scale of Rs.240-290 and directed to pay him salary for the period commencing from December, 1969 to August, 1978

and further it was ordered that the amount paid to him as daily wages employee may be deducted. The order passed by the Judge, Labour Court, Bikaner under Section 33-C (2) of the Act of 1947 is not based on an existing right of non-petitioner, therefore, the order under challenge is totally without jurisdiction.

Learned Dy. Govt. Advocate has invited the attention of this Court towards three judgments of Hon'ble Supreme Court reported in (1995) 1 SCC 235, (2001) 1 SCC 73 and (2005) 8 SCC 58.

In the judgment reported in (2005) 8 SCC 58, the Hon'ble Supreme Court has held as follows :

> "The workman can proceed under Section 33-C (2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that oder and reinstated the workman. A proceeding under Section 33-C (2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. The right to the money which is sought to be calculated or to the benefit which is

sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation tot he relationship between the industrial workman and is employer. It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act.

The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental tot he Labour Court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under

> Sections 33-C (2) of the Act while the latter does not."

In view of the aforesaid adjudication made by Hon'ble Supreme Court, this writ petition is allowed. The impugned order dated 2.11.1993 passed by Judge, Labour Court, Bikaner is hereby set aside. No order as to the costs.

(GOPAL KRISHAN VYAS), J.

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